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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1182nd MEETING

Held at the Palais des Nations, Geneva
on Thursday, 22 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1182/Add.1.

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The meeting was called to order at 10 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Draft decision on Bosnia and Herzegovina (CERD/C/49/Misc.11/Rev.2) (continued)

1. Mr. SHERIFIS recalled that, although the Committee had unanimously acknowledged the balanced wording of the proposed draft decision, he and others, including Mr. Chigovera, had expressed misgivings about paragraph 3 in the belief that it would be wrong for the Committee to give the impression, in any way whatsoever, that it was against the holding of the forthcoming elections in Bosnia and Herzegovina, even though it might have serious concerns about the manner in which the elections were to be conducted. On the basis of consultations among Committee members, he proposed the insertion of the phrase ", important and advisable as they are," after the words "holding of elections", which he hoped would enable the Committee to adopt the draft decision by consensus.

2. Mr. van BOVEN, Mr. WOLFRUM, Mr. GARVALOV, Mr. YUTZIS and Mr. CHIGOVERA endorsed the proposal.

3. The CHAIRMAN said he took it that the Committee wished to adopt the draft decision, as amended and including the new paragraph 9 proposed by Mr. Shahi, by consensus.

4. It was so decided.

5. The CHAIRMAN said in reply to a question by Mr. de GOUTTES, that he would see to it that the text of the decision was made available to Committee members and distributed as soon as possible.

Draft declaration on Cyprus (CERD/C/49/Misc.34)

6. Mr. WOLFRUM said that the recent incidents that had taken place in Cyprus, which had led to the killing of two young men, were clearly of concern to the Committee under the terms of the Convention. The draft declaration was based, inter alia, on previous statements made by the Committee on similar incidents elsewhere and on past decisions.

7. Mr. CHIGOVERA said that the events in Cyprus warranted a reaction from the Committee and that the draft declaration fully respected the Committee's mandate and established practice.

8. Mr. FERRERO COSTA said that the Committee should avoid giving interpretations of situations rather than facts. The text beginning "as a result of" should therefore be deleted.

9. The CHAIRMAN suggested that the Committee should suspend consideration of the draft declaration on Cyprus for the time being.

10. It was so agreed.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Draft concluding observations concerning the tenth to fourteenth periodic reports of India (CERD/C/49/Misc.6/Rev.1) (continued)

11. The CHAIRMAN drew attention to the revised version of the draft concluding observations, a number of paragraphs of which were still pending.

Paragraph 5

12. The CHAIRMAN proposed the addition of a sentence reading: "The Committee also acknowledges, with high appreciation, the far-reaching measures adopted by the Government to combat discrimination against members of Scheduled Castes and Scheduled Tribes."

13. Mr. RECHETOV, pointing out that the paragraph came under section C, "Positive aspects", said that the words "with high appreciation" were superfluous; otherwise the proposal was acceptable.

Paragraph 6

14. Mr. SHAHI said that the Committee's expression of regret that certain communities did not enjoy representation in proportion to their size had been removed from the earlier version of paragraph 6 (former paragraph 8) on the understanding that it would be inserted elsewhere in the text. However, it had now been omitted altogether and he was unwilling to proceed before being informed of where it was to be inserted.

15. The CHAIRMAN, speaking as a member of the Committee, suggested that, since the subject of paragraph 6 was the composition of the State party's report, and since it referred to both positive and negative aspects, the missing wording might be reinserted into the paragraph and the whole paragraph removed to the introduction, between paragraphs 2 and 3.

16. Mr. CHIGOVERA pointed out that the new paragraph 6 had been adopted after the deletion of the phrase referred to by Mr. Shahi, on the understanding that if it were to be included in the concluding observations, it should be regarded as one of the Committee's concerns, although no specific decision had been taken to include it in section D. The Committee should not reopen a debate on a paragraph that had already been adopted; the matter could be raised when the Committee was considering the principal subjects of concern.

17. Mr. SHAHI objected that the debate had not been concluded since it had been agreed to insert that expression of regret into the section on concerns, but it had been edited out of the text altogether.

18. Mr. RECHETOV said it should be made quite clear which paragraphs remained open to discussion. Unless an error had been found, the Committee could not reopen a debate on paragraphs already agreed upon and adopted by the Committee as a whole. To do so would require a special procedure. He cautioned against creating a dangerous precedent in the adoption process.

19. Mr. GARVALOV said he shared Mr. Shahi's understanding that the Committee had decided to transfer the whole of the second part of the paragraph, after the words "are welcomed", from section C to section D. Agreeing with Mr. Rechetov that reconsideration of observations already adopted would require a formal decision, he was not in favour of reopening the debate, but at the same time urged flexibility to accommodate Mr. Shahi's concerns by moving the latter part of the sentence to section D.

20. Mr. CHIGOVERA endorsed the latter suggestion.

21. The CHAIRMAN said he took it that the Committee agreed that paragraph 6 should end with the words "are welcomed" and that the subsequent expressions of regret both about under-representation of certain communities and failure to submit data as part of the report would be reconsidered under section D.

22. It was so agreed.

Paragraph 12

23. Mr. SHAHI said that the word "abrogation" should be replaced by "lapse", which accurately reflected what had been stated in the report and orally.

Paragraph 21

24. Mr. CHIGOVERA, supported by Mr. WOLFRUM, said that there was no objection to referring to legislation that was in force, but that the Committee should not indulge in speculation and refer to bills, such as the Criminal Law Amendment Bill, that had not yet been passed.

25. Mr. SHAHI quoted from the Amnesty International Report 1996, which stated that many of the same provisions as the Terrorist and Disruptive Activities (Prevention) Act (TADA) - which, it was reported, had been used to detain tens of thousands of political detainees without trial - were contained in the proposed Criminal Law Amendment Bill. The formulation proposed in paragraph 21 of the draft concluding observations was very mild when one considered such reports.

26. The CHAIRMAN pointed out that the objection was not to the formulation but to the fact that the Bill had not yet been adopted. He asked whether Mr. Shahi would be prepared to defer to what appeared to be the majority view and to conclude the sentence with the words "remain in force".

27. Mr. SHAHI said that was unacceptable. The effects of the provisions of the TADA were well documented by authoritative sources. The Committee should apply the same standards when considering all reports.

28. Mr. WOLFRUM, supported by Mr. FERRERO COSTA and Mr. CHIGOVERA, said that he was as strongly opposed to the TADA as anyone else, but that the Committee knew little about the Criminal Law Amendment Bill and had never before referred to pending legislation in its concluding observations.

29. Mr. RECHETOV agreed that the Committee should not criticize a bill before it had even been adopted. Moreover, it was not certain that the Criminal Law Amendment Bill would perpetuate the provisions of the TADA. He did not consider the reports that Mr. Shahi had cited as adequate proof of the facts. He accordingly agreed that the paragraph should end with the words "in force".

30. Mr. SHAHI said that he wished to place on record his dissatisfaction at the deletion of the last part of the paragraph.

31. He suggested that the phrase "some areas of India" should be replaced by "some areas administered by India".

32. Mr. FERRERO COSTA said that the Committee must not be seen to make political statements.

Paragraph 23

33. The CHAIRMAN suggested that a new sentence should be added after the first sentence, reading: "The Committee regrets that certain communities do not enjoy representation in proportion to their size."

34. Mr. CHIGOVERA and Mr. GARVALOV asked whether the phrase "certain communities" was intended to refer exclusively to the Scheduled Castes and Tribes.

35. Mr. RECHETOV said that paragraph 23 should not be amended. Under-representation in the public service was by no means the most serious problem faced by the Scheduled Castes and Tribes.

36. The CHAIRMAN suggested that the new sentence should be placed in a paragraph by itself after the existing paragraph 23.

37. It was so decided.

Paragraph 24

38. The CHAIRMAN invited the Committee to comment on the two alternative versions of the paragraph.

39. Mr. YUTZIS said that the main substantive difference between the two versions was that the first said that the Supreme Court had "reaffirmed the principle" of awarding compensation, and the second that Indian courts "had the jurisdiction" to award compensation. He proposed that the two ideas should be combined in the first version of the paragraph, to read: "... the Supreme Court has jurisdiction to award compensation and has, in some cases, reaffirmed the principle ...".

40. Mr. DIACONU pointed out that it was the Supreme Court which established the principle of awarding compensation and that lower courts then had the jurisdiction to award that compensation. He preferred the second version of the paragraph.

41. Mr. CHIGOVERA said that he had prepared the second version of the paragraph as a compromise. In any case, under article 6 of the Convention, States parties were obliged to provide "effective protection and remedies", although not necessarily by means of specific legislation. Paragraph 32 of India's report (CERD/C/299/Add.3) stated that the Supreme Court or a High Court had the power to award compensation under articles 32 and 226 of the Constitution. The "effective protection" laid down in article 6 was therefore provided. He could not accept the first version of the paragraph.

42. Mr. SHAHI said that, according to the report, only the Supreme Court and the High Courts could award compensation. He accordingly proposed that the second version of the paragraph should be amended to read: "Although it is noted that the Supreme Court and the High Courts have the jurisdiction to award compensation ...".

43. The CHAIRMAN suggested that the Committee should adopt the second version of the paragraph with the amendment suggested by Mr. Shahi.

44. It was so decided.

Paragraph 27

45. Mr. SHAHI proposed that the phrase "in any parts of the country" should be deleted.

Paragraph 28

46. Mr. AHMADU proposed that the word "precise" should be deleted.

Paragraph 29

47. The CHAIRMAN suggested that the word "comprehensive" should be deleted.

Paragraph 31

48. The CHAIRMAN, speaking as a member of the Committee, suggested that the second sentence should be amended to read: "... inviting international observers to monitor elections in certain areas".

49. Mr. WOLFRUM suggested that the whole paragraph should be deleted.

50. Mr. GARVALOV said that the tone of the paragraph implied that India had never held elections before, which was certainly not the case.

51. The CHAIRMAN said that he took it that the Committee wished to delete paragraph 31.

52. It was so decided.

Paragraph 33

53. Mr. YUTZIS said that it had been his idea to suggest a visit to India by Mr. Glélé-Ahanhanzo, Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, which he thought would be a very useful step.

54. Mr. CHIGOVERA said that the Special Rapporteur had his own mandate and would not be accountable to the Committee. Any mission undertaken should be by Committee members at the invitation of the Indian Government, as the mission to Kosovo had been. He proposed that the paragraph should be deleted.

55. Mr. van BOVEN suggested the following wording: "The Committee suggests to the Government of India that it invite Mr. Glélé-Ahanhanzo ... to pay a visit to India, in accordance with his mandate ...". The Special Rapporteur and the Committee were complementary and should work together.

56. Mr. GARVALOV said that the paragraph did not describe the Committee's discussion of India's report and should thus, strictly speaking, be in square brackets. On the substance of the paragraph, he was doubtful about any mission by the Special Rapporteur, who was not a member of the Committee, and felt that the United Nations should concentrate on work by committees and other bodies, rather than individuals. Any visit to India should be undertaken by Committee members under the early warning and urgent procedures, as with the mission to Kosovo, although for the sake of compromise he could accept Mr. van Boven's amendment.

57. Mr. SHERIFIS echoed the views expressed by Mr. Garvalov.

58. Mr. de GOUTTES said that Mr. Yutzis' proposal was a new, but valuable one. It would enable the Committee to contribute to the Special Rapporteur's programme of visits, which had been the subject of much discussion, and would help to coordinate the Committee's work with that of the Special Rapporteur. Of course, the initiative must not be limited to India, and it would need to be further developed in the future. The High Commissioner for Human Rights appeared to approve of the proposal. He accordingly supported the paragraph as it stood, but could also accept Mr. van Boven's amendment.

59. Mr. WOLFRUM said that he, personally, was in favour of Mr. Yutzis' proposal, but there was clearly no consensus among the Committee. Perhaps some other international humanitarian institution, such as the International Committee of the Red Cross, which had more experience than the Committee would be better suited to the task. The Committee's mission to Kosovo had been a success, but an enormous country like India was quite another matter.

60. Mr. AHMADU suggested that the Committee might draw up a list of countries for the Special Rapporteur to visit, which would avoid singling out India. However, since the Committee's time for debate was so short, the best solution might be to delete the paragraph altogether.

61. Mr. SHAHI said that it would be discriminatory to apply the new procedure proposed by Mr. Yutzis to India alone. Perhaps the most appropriate person to undertake a mission to India would be the High Commissioner for Human Rights, but he did not feel that the Committee could suggest such a step. He had been alarmed by Mr. Garvalov's suggestion that the Committee should resort to its early warning and urgent procedures: surely the situation in India did not justify that? If the Committee decided to retain the paragraph, he would agree for the sake of consensus, but he felt that it would require considerable redrafting.

62. Mr. LECHUGA HEVIA said that the paragraph should be deleted, since the proposal was an imposition on the State party and was tantamount to the Committee asking another United Nations body to do its work for it.

63. Mr. FERRERO COSTA said that he doubted whether the Committee should make use of a Special Rapporteur from another body, and he was not convinced that India merited such a procedure more than any other country. Any mission to India should be undertaken by the Committee members themselves.

64. Mr. DIACONU said that the paragraph should be deleted. Any visit made by the Special Rapporteur would be under his own mandate, not the Committee's. There was no need to invoke early warning or urgent procedures: the only reason for a visit to India would be to learn more about the question of caste and decide whether it was an ethnic or a purely social issue. The best people to decide that specific question were the members of the Committee.

65. It was true that the procedure was a new one, but he felt that no other country differed so much from the Committee in its interpretation of its de jure and de facto situation, as India did.

66. Mr. VALENCIA RODRIGUEZ associated himself with the views expressed by Mr. van Boven and Mr. Wolfrum and said it would be more appropriate to apply early warning and urgent procedures in the case of India.

67. Mr. YUTZIS said that, under article 9 (2) of the Convention, the Committee was entitled to make suggestions based on the examination of the reports of States parties. The only restriction on the nature of the suggestions was that the members of the Committee had to agree on them. In the case of paragraph 33, the Committee clearly did not. Although, strictly speaking, the work of the Special Rapporteur on contemporary forms of racial discrimination, xenophobia and related intolerance came under the mandate of the Commission on Human Rights, the nature of his work did complement that of the Committee which should therefore consider how, in the future, the Special Rapporteur could be of assistance.

68. As to visits to India, given the sheer size and population of the country, none of the members of the Committee could possibly spare the time needed properly to investigate the situation there. However, the Special Rapporteur had been appointed specifically for that kind of work, and what was more, he had the necessary logistical support. The question of jurisdiction was irrelevant, it was simply that he could do the job better. It would be wrong to consider that sending him to a country was an imposition.

69. Mr. van BOVEN suggested that the Committee should try to find time to meet with the Special Rapporteur during the fiftieth or fifty-first session.

70. The CHAIRMAN said that other human rights treaty bodies were considering the possibility of optional protocols to provide for visits and other methods of supervision. The Committee should keep itself informed of developments. Given the lack of consensus, he took it that the Committee wished to delete paragraph 33.

71. It was so decided.

72. Mrs. SADIQ ALI said that she dissociated herself from the Committee's draft concluding observations on India.

73. The draft concluding observations concerning the tenth to fourteenth periodic reports of India, as amended, were adopted with the proposed amendments and subject to possible minor drafting changes.

Draft concluding observations concerning States parties considered under the second round reviews (CERD/C/49/CRP.1/Add.14 and 16-24)

74. The draft concluding observations concerning States parties considered under second round reviews were adopted.

The public part of the meeting rose at 11.45 a.m.